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UNITED STATES SUPREME COURT

1982-1983 TERM

EFFIE ROY STANSBURY, Personal Representative

of the Estate of Larry R. Stansbury,

Plaintiff-Applicant

VERSUS

SIKORSKI AIRCRAFT, Defendant,

CHEVRON, USA, Defendant-Respondent

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GARY E. THEALL

THEALL & FONTANA

POST OFFICE BOX 877

ABBEVILLE, LA 70510

318-893-7142

QUESTIONS PRESENTED FOR REVIEW

1. Where an employer-owned helicopter crashes into the high seas above the outer continental shelf, killing an employee, do the survivors of the employee have a remedy under the Death On the High Seas Act?

2. Does the Outer Continental Shelf Lands Act ("Shelf Act") apply to the high seas despite its express language to the contrary?

3. Does the Shelf Act, by adopting the Longshoremen's and Harbor Workers' Compensation Act ("Longshoremen's Act"), deprive the widow and child of a remedy which they otherwise would have had, despite the express language in the Shelf Act to the contrary?

4. Under the facts of this case, do the survivors of the employee have a remedy under the general maritime law?

5. If the Longshoremen's Act applies, does it include land-based executive personnel who are not platform workers?

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REPORTS OF OPINIONS BELOW

1. The Memorandum Opinion of the trial judge dated June 9, 1981, is not reported. A copy of the opinion appears in the Appendix to this Petition.

2. The opinion of the Fifth Circuit Court of Appeals is reported at 681 F. 2d 948.

STATEMENT OF JURISDICTION

Petitioner seeks review of the judgment of the Fifth Circuit Court of Appeals dated July 22, 1982. Petitioner did not file an application for rehearing.

The helicopter crash occurred on the highs seas above the outer Continental Shelf outside the jurisdiction of any state. Jurisdiction is based on the following statutes:

Federal Question Jurisdiction 28 U.S.C.A. §1331.

Death On the High Seas Act 46 U.S.C.A. §761 et seq.

General Maritime Law 28 U.S.C.A. §1333.

Outer Continental Shelf Lands Act 43 U.S.C.A. §1331 et seq.

STATUTES INVOLVED

1. Death on the High Seas Act, 46 U.S.C.A. §§761 et seq.

2. Outer Continental Shelf Lands Act, 43 U.S.C.A. §§1331 et seq. ("Shelf Act").

3. Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §§901 et seq. ("Longshoreman's Act").

[See Appendix for pertinent text.]

STATEMENT OF THE CASE

This case presents questions of great importance to the coastal states. These questions should be answered by the United States Supreme Court, and have not previously been answered.

Larry R. Stansbury was employed by Chevron, USA, as chemical and process foreman. He was based on land in the Lafayette office of Chevron, nowhere near any pier, wharf, dry dock, terminal, buildingway, marine railway, or any area adjoining navigable waters. He was a salaried employee on the executive level. His duties included supervision and coordination of painting projects on land and offshore; supervision of painting contractors; allocating supplies; keeping records; preparing budgets. He was considered supervisory personnel. He did no manual labor, just visual inspection and paperwork. The paperwork was done in his office on land in Lafayette. The manner in

which he accomplished his duties was left to his discretion. He worked Monday through Friday, eight hours per day. He was out of his office three or four times per week to inspect sites, some of which were on land and some offshore. He was assigned a permanent company car. He was not permanently assigned to any platform or land rig. He normally returned to his home at the conclusion of each workday. He sometimes returned home directly from a rig site without going back to his office first.

On July 18, 1980, Stansbury was on a platform in the Gulf of Mexico. He had finished his duties, and was awaiting a helicopter to carry him back to shore. He telephone his wife, and told her that he had completed his duties and had missed one helicopter ride, but would catch the next. He wanted to go straight home since he and his wife were to dine that night with a relative from Germany who was visiting in Abbeville. Shortly thereafter, Stansbury

boarded a Sikorsky helicopter owned by his employer. While flying over Eugene Island Block 296, Gulf of Mexico, the helicopter crashed into the high seas more than a marine league off the coast of the state of Louisiana. Stansbury and others were killed in the crash. Some of the injured parties were not employees of Chevron.

Suit was filed in September, 1980, by the personal representative of the estate of Larry R. Stansbury on behalf of herself as surviving spouse and on behalf of Frankie Gale Stansbury, infant daughter of the decedent, alleging that decedent was killed in a helicopter crash on the high seas more than a marine league off the coast of Louisiana. The suit was brought under the provisions of the Death on the High Seas Act, the Jones Act, General Maritime Law, and all other applicable laws, against Chevron, USA (owner of the helicopter and employer of the decedent), and against Sikorsky Aircraft (manufacturer of the helicopter).

Defendant Chevron, USA, filed a motion for summary judgment on the ground that decedent was not a Jones Act seaman, and that the Longshoremen's and Harbor Workers' Act provided the exclusive remedy.

Plaintiff filed a motion for summary judgment to the effect that she had a remedy under the Death on the High Seas Act, since the death occurred on the high seas more than a marine league from shore. Affidavits and depositions were filed into the record by both sides.

The trial court granted Chevron's motion for summary judgment and dismissed them from the case with full prejudice. Plaintiff's motion for summary judgment as to a remedy under the Death on the High Seas Act was denied. On appeal, the Fifth Circuit affirmed in an opinion which failed to address the claim under the Death on the High Seas Act.

ARGUMENT

APPLICABILITY OF DEATH ON THE HIGH SEAS ACT

The opinion of the Fifth Circuit Court of Appeals held that the decedent was not a seaman, and therefore the exclusive remedy of his survivors is under the Longshoreman's Act. The opinion fails to discuss the availability of a remedy under general maritime law or the Death on the High Seas Act, 46 U.S.C.A. §§ 761 et seq., which provides in part:

> Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the dededent's wife, husband, parent, child, or dependent relative against the vessel, person or corporation which would have been liable if death had not ensued.

This act has been held on numerous occasions to apply to crashes of aircraft into the high seas, provided there is a maritime connec-

tion. Roberts v. U.S., 498 F. 2d 520 (9th Cir. 1974), cert. denied, 95 S. Ct. 656; Higginbotham v. Mobil Oil Corp., 357 F. Supp. 1164, 360 F-Supp. 1140, 545 F. 2d 422, 494 (5th Cir. 1977), 56 L. Ed 2d 581, 578 F. 2d 565; and numerous other cases.

The Death on the High Seas Act was enacted in 1920 to provide a wrongful death action on the high seas. The need for this act existed because state wrongful death statutes were already being applied by the courts in territorial waters, yet no remedy existed for wrongful death on the high seas. [Since that time, however, the Supreme Court has recognized a wrongful death action in both territorial waters and the high seas under general maritime law. Moragne v. States Marine Lines, Inc., 398 U.S. 375, 90 S. Ct. 1772 (1970).]

A case which is very important to a proper analysis of the issues presented herein is The Linseed King, 285 U.S. 502, 52 S. Ct. 450 (U.S. 1932). The defendant corpo-

ration owned a vessel which it used to transport its employees from one side of the Hudson River to its plant on the other side. The vessel, which was not equipped to run in ice, collided with an ice floe and sank, resulting in considerable loss of life. Survivors of the employees sued the employer in the admiralty court. The employer argued that their exclusive remedy was state workmen's compensation. The court disagreed:

> The petitioners maintain, first, that the state statute providing workmen's compensation is inapplicable to the maritime torts here in question and that they were entitled to relief under the maritime law or the death statutes of New York adopted as part of that system. ... As we think the first contention well founded we have no occasion to pass upon the second.
>
> Kellogg & Sons undertook the interstate carriage of passengers by water on a launch operated by its servants. This was a maritime matter. The ferriage was for the facilitation of the company's business and for its convenience as well as that of the employees. The injury to the passengers resulted from negligence of the company's agents in the navigation of the launch. It was a maritime tort. ...As the tort, though maritime, was committed upon the waters of the state of New York,

> the personal representatives of those who lost their lives were entitled to sue in admiralty and to recover as provided by the state statute giving a remedy for death by wrongful act.

52 S. Ct. at 453. Ignoring the effect of the Longshoreman's Act for the time being, the Linseed King makes it clear that an employee does have a remedy against his employer under maritime tort and under the Death of the High Seas Act (the high seas counterpart of the state death statutes).

Under the Death on the High Seas Act, the only requirements are 1) death 2) by wrongful act consummated on the high seas 3) more than a marine league from shore. All of those requirements are met in this case. Stansbury's widow and child must be held to have a remedy under the Death on the High Seas Act, unless the court finds that the Longshoreman's Act, as adopted by the Outer Continental Shelf Lands Act, somehow operates to extinguish this remedy which would otherwise exist.

Applicability of General Maritime Law

In addition to the remedy under the Death on the High Seas Act, the survivors also have a remedy under general maritime law. Moragne, supra, clearly established a wrongful death action under general maritime law. The crash of an aircraft into the high seas, when there is a maritime connection, has been held to be cognizable in admiralty as a maritime tort. Noel v. United Aircraft Corp., 204 F. Supp. 929 (Del. 1962); Wilson v. Transocean Airlines, 121 F. Supp 85 (Cal. 1954). As discussed above, the Linseed King makes it clear that an employee can sue his employer for maritime tort. Stansbury's survivors must therefore also be held to have a Moragne remedy, unless this court finds that the Longshoremen's Act, as adopted by the Lands Act, somehow operates to extinguish this remedy which would otherwise exist.

Inapplicability of the Shelf Act

The Outer Continental Shelf Lands Act, 43 U.S.C.A. §§1331 et seq. ("Shelf Act")

adopted in 1953, extended the jurisdiction of the United Sates to the submerged lands of the outer continental shelf. The act is replete with references which make it clear that the act affects only the subsoil and seabed of the shelf, and not the seas. The act defines "outer Continental Shelf" as all submerged lands lying seaward and outside of the area of lands beneath navigable waters. 43 U.S.C.A. §1331. The jurisdiction of the United States is extended to the subsoil and seabed of the outer Continental Shelf. 43 U.S.C.A. §1332(1). Extremely pertinent is §1332(2), which provides:

> This subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected.

(Emphasis added.)

The Constitution and laws of the United States are extended to the subsoil and seabed of the outer Continental Shelf, and to artifical islands attached to the seabed. 43

U.S.C.A. §1333(a)(1). The laws of the adjacent states, insofar as not inconsistent with Federal law, are adopted for the subsoil and seabed and artificial islands thereon. 43 U.S.C.A. §1333(a)(2). The Longshoreman's Act is adopted as the worker's compensation on the outer Continental Shelf and the artificial islands. 43 U.S.C.A. §1333(b).

The drafters of the act could not have been more clear in expressing the congressional intent not to affect the law as it related to the high seas. One of the primary laws which the Congress must have had in mind is the Death on the High Seas Act. General maritime law is also unaffected by the Lands Act. This result has been reached in several cases.

In Guess v. Read, 290 F.2d 622 (5th Cir. 1961), a helicopter crashed into the high seas off Louisiana, killing plaintiff's decedent. The issue was whether the Louisiana Direct Action Statute could be

invoked to allow a direct action against the insurer. The court held no:

> The Continental Shelf Act was enacted for the purpose, primarily, of asserting ownership of and jurisdiction over the minerals in and under the Continental Shelf. Jurisdiction was asserted over "the subsoil and seabed" of the outer Continental Shelf. ...It is only for "that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon" that the State law applies. ...This does not include the sea above the subsoil and seabed and does not include the air above the sea. That this is the intent is further shown by the provision that the Act "shall be construed in such a manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected."

(Emphasis added.) In other words, the Court held that the adoption of State law by the Shelf Act did not make state law applicable to the high seas, since the Act itself applies only to the subsoil and seabed. Applying this result to the instant case, the conclusion is unavoidable that the Shelf Act is inapplicable.

The Lands Act specifically provides that the adoption of the Longshoremen's Act was not intended to exclude the application of other laws. This is provided in 43 U.S.C.A. §1333 (f):

> Provisions as non-exclusive
> (f) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artifical islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

Inapplicability of the Longshoremen's Act

It goes without saying that if the Lands Act is inapplicable, the Longshoreman's Act is also inapplicable. However, in the event that the court should find that the Lands Act is applicable, which is denied, there are compelling reasons why the Longshoreman's Act still does not apply.

First, Stansbury was a land-based employee. He had his own office in

Lafayette, Louisiana, nowhere near a "pier, wharf, dry dock, terminal, buildingway, marine railway, or any area adjoining navigable waters customarily used for loading and unloading vessels" as required by the Act. 33 U.S.C.A. §§ 902(4), 903. He was out of his office three or four times per week, sometimes inspecting land sites, and sometimes offshore sites. He was assigned a permanent company car. He normally returned home at the conclusion of each eight-hour work day. He was not assigned to any particular land or offshore rig.

Secondly, Stansbury was executive, supervisory personnel, and not a laborer. He was a chemical and process foreman. His duties consisted of supervision and coordination of painting projects on land and offshore; supervision of painting contractors; allocating supplies; keeping records; preparing budgets. He did no manual labor, just visual inspection and paperwork. The manner in which he accomplished his duties was left to

his discretion. He was not a longshoreman, harbor worker, or any kind of manual laborer by any stretch of the imagination.

Thirdly, the Longshoreman's Act has never been interpreted as exclusive. Even before the 1972 amendments, the "twilight zone" existed in which a worker could elect the state remedy and reject the Longshoreman's coverage. Davis v. Department of Labor, 317 U.S. 249, 63 S. Ct. 225 (1942). As recently as last year, the Supreme Court held that the 1972 landward extension of the Longshoreman's Act was intended to supplement, rather than supplant, state law. Sun Ship, Inc. v. Pennsylvania, 100 S. Ct. 2432 (1980). By analogy, the extension of the Longshoreman's Act would supplement, rather than supplant, maritime law. Nowhere is there any indication the Longshoreman's Act was intended to deprive parties of maritime rights which they had prior to the passage of the Lands Act and the 1972 amendments to the Longshoreman's Act. For the court to hold that Stansbury's

survivors' exclusive remedy is under the Longshoreman's Act would be to hold that they have lost maritime rights which they clearly had before the passage of these Acts.

Fourthly, the cases relied upon by defendant do not require a finding that this is a Longshoreman's case. In Nations v. Morris, 483 F. 2d 577 (5th Cir. 1973), the plaintiff was assigned to a fixed platform and was injured by a fellow servant on the platform. The court held that the Longshoreman's Act provided the exclusive remedy against the employer and fellow servant. There were no issues of Death on the High Seas, Moragne death action, land-based executive personnel, or any other issues that we have in the instant case. Nations is not controlling. In another case relied upon by defendant, Billings v. Chevron, USA, 618 F. 2d 1108 (5th Cir. 1980), The plaintiff worked as a roustabout on a platform, ate and slept on the platform, and his duties consisted of loading and unloading vessels. The court

held that he was not a Jones Act seaman. Again there are no common issues between Billings and Stansbury. Billings is not controlling. Likewise, all of the other cases relied upon by defendant involve platform events. This is not a platform case.

Fifthly, if this court should hold that the Longshoreman's Act applies to this death on the high seas, it would mean that state law also applies to the high seas. This is true because the same section of the Shelf Act adopts both state law and the Longshoreman's Act, so that if one applies, they both apply. This would directly contradict Guess, supra, which held that state law does not apply on the high seas above the Continental Shelf.

Finally, it is submitted that it is not clear that decedent was acting within the course and scope of his employment at the time of the helicopter crash, and therefore it was improper for the judge to grant

summary judgment, even if the court should find that the Longshoreman's Act is applicable, which is denied.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

EFFIE ROY STANSBURY, PERSONAL REPRESENTATIVE OF THE ESTATE OF LARRY R. STANSBURY

VS. CIVIL ACTION NUMBER 801459

SIKORSKI AIRCRAFT and CHEVRON, USA SECTION S

MEMORANDUM OPINION

This cause came for hearing before the Court on April 21, 1981, upon Cross Motions for Summary Judgment filed on behalf of plaintiff and Chevron, USA. The Court reviewed the briefs, heard oral argument and denied the plaintiff's Motion for Summary Judgment and granted the defendant's Motion for Summary Judgment for the reasons stated below.

The plaintiff in this cause of action is the personal representative of the Estate of Larry R. Stansbury. On July 18, 1980, the decedent was employed by Chevron, USA as a

Chemical and Process Foreman. He was assigned to and worked out of the Lafayette, Louisiana office of Chevron, USA and normally returned to his family and residence in Abbeville, Louisiana, at the conclusion of each day's work. On the above date, Mr. Stansbury was a passenger in a helicopter owned by Chevron and manufactured by Sikorski Aircraft. The helicopter was flying over the Gulf of Mexico, off the coast of Louisiana. Shortly after departing from a structure in Eugene Island Block 305, the helicopter crashed into the Gulf of Mexico, causing the death of Mr. Stansbury.

The issue which was before the Court was whether plaintiff's decedent was a seaman under the provisions of the Jones Act, 46 U.S.C. §688. In order to determine whether or not someone is a seaman, they must meet three requirements:

1. The vessel involved must be in navigation;

2. There be a more or less permanent connection with that vessel; and,

3. The worker must be aiding in the navigation of the vessel.

Beard v. Shell Oil Co., 606 F.2d 515 (5th Cir. 1979); Davis v. Hill Engineering, 549 F.2d 314 (5th Cir. 1977); Offshore Co. v. Robison, 226 F.2d 769 (5th Cir. 1980); Longmire v. Sea Drilling Corporation, 610 F.2d 1342 (5th Cir. 1980).

It is clear from the affidavit submitted by the defendant and the record that the decedent had no permanent connection to any vessel. He had no function whatsoever with a vessel as it related to aiding navigation. Decedent was simply a chemical and process foreman who died in the crash of a helicopter which was in airflight from an offshore structure back to land.

Inasmuch as this Court has found that the decedent has not met the test for seaman status, any cause of action against his employer, Chevron, USA, is subject to the provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. §1301, et seq. Under this statute, the death or disability of an employee is compensable under the provisions of the Longshoremen's and Harbor Workers'

Compensation Act 33 U.S.C. §901, et. seq.

This Act provides that it is the employer's responsibility for injuries and death suffered by its employees. Consequently, an employer is not subject to suit in tort by an injured employee. The Act provides, in part:

"(i) The right to compensation or benefits under this chapter shall be the exlusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: Provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer." 33 U.S.C. §933 (i).

Opelousas, Louisiana, June 9, 1981.

S/ JOHN M. SHAW
UNITED STATES DISTRICT JUDGE

EFFIE ROY STANSBURY, Personal Representative of the Estate of Larry R. Stansbury, Plaintiff- Appellant,

v.

SIKORSKI AIRCRAFT, Defendant,

CHEVRON USA, Defendant-Appellee.

No. 81-3270

United States Court of Appeals

Fifth Circuit.

July 22, 1982.

Appellant Effie Roy Stansbury is the personal representative of the Estate of Larry R. Stansbury, her deceased husband. On July 18, 1980, the decedent was employed by Chevron as a chemical and process foreman. His office was in Lafayette, Louisiana, but his duties included traveling three to four times per week to drilling sites both offshore and on land to supervise and inspect painting projects. The offshore drilling rigs were "fixed" rigs. He was not permanently attached to any platform or land

rig and normally returned home at the conclusion of each work day. On July 18, 1980, Stansbury inspected a paint job on a platform in the Gulf of Mexico. After he finished his duties, he boarded a Sikorski helicopter owned by Chevron. While flying over Eugene Island Block 296, Gulf of Mexico, the helicopter crashed into the sea, causing the death of Stansbury.

In September 1980, Mrs. Stansbury filed suit on behalf of herself as surviving spouse and her daughter under Death on the High Seas Act (DOHSA), the Jones Act, and general maritime law against Chevron and Sikorski Aircraft. Chevron filed a motion for summary judgment alleging that Stansbury was not a Jones Act seaman and that, therefore, Longshoremen's and Harbor Workers' Compensation was the exclusive remedy under the Outer Continental Shelf Lands Act, 43 U.S.C.A. §1331, et seq. (OCSLA). The district court granted the motion and Mrs. Stansbury appealed, claiming that her husband

was a Jones Act seaman and that she has a cause of action under DOHSA and general maritime law. We hold that the Longshoremen's and Harbor Workers' Compensation is the exclusive remedy against Chevron and affirm the judgment of the district court.

The Outer Continental Shelf Lands Act incorporates the remedies of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §§901 et seq. (LHWCA), for employees injured while involved in drilling operations in the Outer Continental Shelf (OCS):

> (b) Longshoremen's and Harbor Workers' Compensation Act applicable; definitions. With respect to disability or death of an employee resulting from any injury occurring as a result of operations, conducted on the outer Continental Shelf for purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §§901 et seq.). For the purposes of the extension of the provisions of the

Longshoremen's and Harbor Workers' Compensation Act under this section--

(1) the term "employee" does not include a master or member of a crew of any vessel, or any officer or employee of the United States or any agency thereof or of any state or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operation; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf, and artificial islands and fixed structures thereon. 43 U.S.C. §1333(3)(b).

We have construed this section to apply to injuries occurring as a result of the operations described without regard to the physical situs of the injury. Nations v. Morris, 483 F.2d 577, 584 (5th Cir. 1973), cert. denied, 414 U.S. 1071, 94 S.Ct. 584, 38 L.Ed.2d 477 (1973). Because OCSLA provides its own status requirement--"employed in operations for purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to natural resources, of the subsoil and seabed of the Outer Continental Shelf"--Stansbury need not be engaged in

"maritime employment" as is required under the LHWCA. Thus, there is no need for an employee to whom OCSLA applies to independently satisfy the two-fold situs and status test for LHWCA coverage. Longmire v. Sea Drilling Corp., 610 F.2d 1342 (5th Cir. 1980). The OCSLA incorporated only the remedies, not the criteria, of the LHWCA. This includes 33 U.S.C. §933(i) which provides that the workers' compensation is the exclusive remedy of an injured employee.

Stansbury meets the status criteria set out in OCSLA. Chevron is engaged in OCS extractive operations and thus meets the definition of employer. Stansbury was inspecting work done under his supervision on a fixed rig located on the OCS.[1] His work

1. OCSLA does not exclude supervisory personnel from its definition of employee. Since the definition of employees did exclude government employees and Jones Act seamen, it follows that supervisory workers would also have been excluded in this section if Congress so intended. Further, this court has held that a construction site foreman was covered by the LHWCA. Gilliam v. Willey N. Jackson Co., 659 F.2d 54, 57-58 (5th Cir. 1981).

furthered the rig's operations and was in the regular course of the extractive operations on the OCS. But for those operations, he would not have been in the helicopter. His death, therefore, occurred "as a result of operations" as required by the OCSLA.

The only exemptions from OCSLA-LHWCA coverage are for government employees and Jones Act seamen. See Higginbotham v. Mobil Oil Corp., 545 F.2d. 422, 432 n.11 (5th Cir. 1977), cert. denied, 434 U.S. 830, 98 S. Ct. 110,54 L.Ed.2d 89 (1977). Stansbury was not a government employee. At trial, Mrs. Stansbury argued that her husband was a Jones Act seaman. At oral argument, however, appellant's counsel conceded that there was no evidence that Stanbury had seaman status. The criteria to establish seaman status was set out in Watkins v. Pentzien, Inc., 660 F.2d 604, 606 (5th Cir. 1981), cert. denied, --U.S.--, 102 S. Ct. 2010, 72 L. Ed.2d--(1982):

> (1) He must have a more or less permanent connection with (2) a vessel in navigation and (3) the capacity in which he is employed or the duties which he performs must contribute to the function of the vessel, the accomplishment of its mission or its operation or welfare in terms of its maintenance during its movement or during anchorage for its future trips.

Whether a person is a seaman under these criteria is normally a question for the jury. Id. The issue may be resolved by summary judgment, however, where the undisputed material facts establish as a matter of law that an individual is not a Jones Act seaman. Id. Stansbury's inspection work was on land rigs and fixed drilling rigs in the OCS. A fixed vessel in the OCS is not a vessel in navigation for purposes of the Jones Act. Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352, 355, 89 S.Ct. 1835, 1837, 23 L.Ed.2d 360 (1969); Callahan v. Fluor Ocean Services, Inc. 482 F.2d 1350, 1351 (5th Cir. 1973). Therefore, summary judgment was properly granted. Because Longshoremen's and Harbor Workers' Compensation is the exclusive

remedy under the Outer Continental Shelf Lands Act, Mrs. Stansbury may not bring an action under DOHSA or general maritime law.[2] The judgment of the district court is

AFFIRMED.

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2. Nothing said in Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 93 S. Ct. 493, 34 L.Ed.2d 454 (1972), or Rodrigue, supra, weakens our conclusion. OCSLA adopted Longshoremen's and Harbor Workers's Compensation to cover "maritime, non-maritime or ambiguous amphibious" claims for injuries to persons employed in natural resource operations on the OCS. See Nations v. Morris, 483 F.2d at 585. OCSLA has no situs requirement and the status requirement relates to OCS extractive operations rather than to traditional maritime employment.

Death on the High Seas Act

§761. Right of action; where and by whom brought

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

Outer Continental Shelf Lands Act

§1331. Definitions

When used in this subchapter--

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

§1332. Congressional declaration of policy

It is hereby declared to be the policy of the United States that--

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United Stated and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;

(2) this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

§1333. Laws and regulations governing lands--Constitution and United States laws; laws of adjacent States; publication of

projected State lines; international boundary disputes; restriction on the State taxation and jurisdiction

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other devices (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter....

(b) With respect to disability or death of an employee resulting from injury occur-

ring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Act. For the purposes of the extension of the provision of the Longshoremen's and Harbor Workers' Compensation Act under this section--

(1) the term "employee" does not include a master of member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof,

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artifical islands and fixed structures thereon....

(f) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artifical islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

Longshoremen's and Harbor Workers' Compensation Act

§902. Definitions

When used in this chapter--

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the

course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States including any adjoining pier, wharf, dry

dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading repairing, or building a vessel).

§903. Coverage

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of--

(1) A master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State

or foreign government, or of any political subdivision thereof.

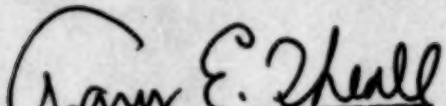
§905. Exclusiveness of liability

(a) The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment,

or that the injury was due to the contributory negligence of the employee.

RESPECTFULLY SUBMITTED,

THEALL & FONTANA

BY: 

GARY E. THEALL
ATTORNEY FOR PETITIONER,
EFFIE ROY STANSBURY

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari have been served on each party to this cause by depositing the same in the United States Mails, postage prepaid, and addressed as follows:

CHEVRON, USA
c/o Mr. Lloyd C. Melancon
McLoughlin, Barranger, Provosty and Melancon
912 Pere Marquette Building
150 Baronne Street
New Orleans, LA 70112

SIKORSKY AIRCRAFT
c/o Mr. R. K. Christovich
Christovich & Kearney
1900 American Bank Building
New Orleans, LA 70130

GARY E. THEALL

NO. 82-824

Office - Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EFFIE ROY STANSBURY, personal representative
of the Estate of Larry R. Stansbury,
Plaintiff-Petitioner,

versus

CHEVRON U. S. A. INC.,
Defendant-Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF BY RESPONDENT CHEVRON U.S.A. INC.
IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LLOYD C. MELANCON, ESQ.
Counsel for Chevron U.S.A. Inc.
912 Pere Marquette Building
150 Baronne Street
New Orleans LA 70112
504 523-5116

Of Counsel:
Messrs. McLoughlin, Barranger,
Provosty and Melancon

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STATEMENT OF THE CASE
CORRECTING INACCURACY

Lest silence be construed as assent, respondent hereby seeks to correct inaccuracies and omissions by petitioner in the Statement Of The Case, as follows:

No. 1- It is affirmatively stated on page 4 thereof that petitioner's decedent was at all times pertinent "- - - - - a salaried employee on the executive level." and "He was considered supervisory personnel." In this connection the uncontroverted facts found by the District Court and affirmed by the Fifth Circuit clearly established that the late Larry R. Stansbury was employed by respondent as a chemical process foreman working a daily shift at a salaried job overseeing and inspecting offshore painting projects on fixed structures performed by independent contractors. In no sense of the word can it be shown from the record that Mr. Stansbury possessed managerial authority, participating in the day to day business administration of the corporation by whom he was employed; and,

No. 2- Additionally, on page 7 of the petition it is represented that "- - - - - the Fifth Circuit affirmed in an opinion which failed to address the claim under the Death on the High Seas Act." The July 22, 1982 Opinion complained of by petitioner concluded on the last page, as follows:

"Therefore, summary judgment was properly granted. Because Longshoremen's and Harbor Workers' Compensation is the exclusive remedy under the Outer Continental Shelf Lands Act, Mrs. Stansbury may not bring an action under DOHSA or general maritime law. 2/ The judgment of the district court is
AFFIRMED.

2/ Nothing said in Executive Jet Aviation Inc. v. City of Cleveland, 409 U.S. 249, 93 S. Ct. 493, 34 L. Ed. 2d 454 (1972), or Rodrigue, supra, weakens our conclusion. OCSLA adopted Longshoremen's and Harbor Workers' Compensation to cover "maritime, non-maritime or ambiguous amphibious" claims for injuries to persons employed in natural resource operations on the OCS. See Nations v. Morris, 483 F.2d at 585. OCSLA has no situs requirement and the status requirement relates to OCS extractive operations rather than to traditional maritime employment."

SUMMARY OF ARGUMENT

A perusal and study of the petition for writ of certiorari utterly fails "- - - - - to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration - - - - -", so that such should be dismissed. U. S. Sup. Ct. Rule 21. *Galveston Causeway Const. Co. v. Galveston, H. & S. A. Ry. Co.*, 262 U. S. 747, 43 S. Ct. 503, 676 L. Ed. 1212 (1923).

Certiorari to review the August 13, 1982 judgment and July 22, 1982 opinion in *Stansbury v. Sikorski Aircraft, et al.*, 681 F.2d 948 (5th Cir. 1982), rendered by the United States Court of Appeals for the Fifth Circuit is not an appealable right, but involves judicial discretion. In this connection, petitioner does not complain of a conflict as to the final decision by the Fifth Circuit with any other Federal Court of Appeals on the same matter, or that the Fifth Circuit has departed to such an extent from the accepted and usual course of judicial proceedings, which would justify an exercise of the power of supervision by this Court. U. S. Sup. Ct. Rule 17. *Durham v. U. S.*, 401 U. S. 481, 91 S. Ct. 858, 28 L. Ed. 2d 200 (1971); and, *Rice v. Sioux City Memorial Parks Cemetery, Iowa*, 349 U. S. 90, 75 S. Ct. 614, 99 L.Ed. 897 (1955).

ARGUMENT

The apparent questions presented for review to the Court in the petition seek answers to the application of Death on the High Seas Act (U. S. C. A., Title 46, Section 761, et seq.), the Longshoremen's and Harbor Workers' Compensation Act (U. S. C. A., Title 33, Section 901, et seq.) and the General Maritime Law in connection with the death of petitioner's decedent arising out of the fall of a helicopter into the Gulf of Mexico while being transported as a passenger in the course and scope of his employment by respondent as a chemical process foreman. The District Court concluded that decedent was engaged in maritime employment in natural resource operations on the Outer Continental Shelf, died in a maritime status and the exclusive remedy for his survivors was under LHWCA.

The latter Act specifically provides for compensation to workers killed during the course of maritime employment. For 45 years after its enactment in 1927, the test for coverage thereunder was simply whether the accident occurred on navigable waters. See *Calbeck v. Travelers Insurance Company*, 370 U. S. 114, 82 S. Ct. 1196, 8 L.Ed.2d 368 (1972). In 1972, Congress amended LHWCA to add status to the traditional situs test in determining coverage. The status criterion calls for the worker to be engaged in maritime employment, LHWCA Section 903(a), and the situs test now requires that the accident occur upon navigable waters.

Thus, an employee killed in the regular course of his employment on navigable waters of the United States automatically meets both the status and situs tests. In *P. C. Pfeiffer Co. v. Ford*, 444 U. S. 69, 100 S. Ct. 328, 62 L.Ed.

2d 225 (1979), this Court declared that one should look to the nature of the activity to which the worker was assigned in determining whether maritime employment was involved. Id. at 82-83, 100 S. Ct., at 337, 62 L.Ed.2d at 236. It was explicitly stated therein, as follows: "- - - - - we understand the word 'including' to indicate that 'longshoring operations' are a part of the *larger group of activities that make up 'maritime employment'*. Id. 77 n. 7, 100 S. Ct. at 334 n. 7, 62 L.Ed.2d at 233 n. 7 (emphasis added).

Adhering to that observation and attempting to fulfull the broad remedial purposes of LHWCA, coverage is not limited to the occupations specifically listed. Indeed, the Act states that the list of covered employees "includes" the enumerated occupations. It does not limit coverage to those particular job classifications. LHWCA Section 902(3). The Senate Report thereon states, as follows: "The definition specifically includes any longshoreman or other person engaged in longshoring operations, any harbor-worker, including a ship repairman, shipbuilding or ship breaker. *It does not exclude other employees traditionally covered* - - - - -". S. Rep. No. 1125, 92d Cong., 2d Sess. 16 (1972) (emphasis added).

At some length in its July 22, 1982 opinion the Fifth Circuit carefully reviewed how the Outer Continental Shelf Lands Act, U. S. C. A., Title 43, Section 1331, et seq., incorporates the remedies of LHWCA to the established facts of this case. No useful purpose can be served by repeating this well presented explanation and petitioner has not in any manner whatsoever advanced relevant authority to the contrary.

It is submitted that respondent's sole liability to petitioner is specifically and unequivocally limited to the LHWCA

wherein Section 905(a) states, as follows:

> "*The liability of an employer* prescribed in section 904 of this title *shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependants, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death,* - - - - -" (emphasis added).

CONCLUSION

Therefore, the District Court as a matter of law properly concluded that the LHWCA was petitioner's exclusive remedy against respondent, in denying recovery under DOHSA and the General Maritime Law. Accordingly, the petition for writ of certiorari is without merit and should be dismissed.

Respectfully submitted,

(SIGNED) LLOYD C. MELANCON

Of Counsel:
Messrs. McLoughlin, Barranger,
Provosty and Melancon

CERTIFICATE

It is hereby certified that 3 copies of the above and foregoing brief were served by depositing such in a mailbox of the United States Postal Service with first-class postage prepaid affixed on the envelope addressed as follows:

Gary E. Theall, Esq., of Messrs. Theall and Fontana, counsel for Effie Roy Stansbury, P. O. Box 877, Abbeville LA 70510,

in accordance with the provisions of U.S. Sup. Ct. Rule 28.3 this 4th day of November, 1982.

(SIGNED) LLOYD C. MELANCON